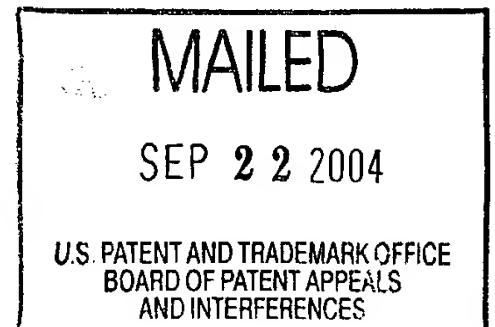


The opinion in support of the decision being entered today was **not** written for publication and is **not** precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES



Ex parte TIMOTHY W. SKSZEK,
MATHEW T.J. LOWNEY and DWIGHT MORGAN

Appeal No. 2004-1949
Application No. 09/851,601

ON BRIEF

Before KRATZ, DELMENDO and PAWLIKOWSKI, Administrative Patent Judges.

PAWLIKOWSKI, Administrative Patent Judge.

REMAND TO THE EXAMINER

Pursuant to our authority under 37 CFR § 41.50(a)(1), we remand this application to the examiner for consideration of the issues set forth below.

On pages 3-4 of the brief, appellants state that they filed a petition to have claims 6-10 (which have been withdrawn by the examiner), to be examined with claims 1-5. On page 10 of the

Appeal No. 2004-1949
Application No. 09/851,601

answer, the examiner states that "the petition is currently under review by the petition's branch." Therefore, in order to avoid piecemeal appeal, we determine that this case is not ripe for our consideration at this time.

We therefore remand this application to the jurisdiction of the examiner to await receipt of the decision on petition before proceeding to this Board forwarding the appeal. In this regard, we note that matters relating to petitions regarding a restriction requirement are outside our jurisdiction. MPEP §§ 1201 and 1002.02(c) (August 2001). This remand to the examiner pursuant to 37 CFR § 41.50(a)(1) (effective September 13, 2004, 69 Fed. Reg. 49960 (August 12, 2004), 1286 Off. Gaz. Pat. Office 21 (September 7, 2004)), is **not** made for further consideration of a rejection. Accordingly, 37 CFR § 41.50(a)(2) does not apply.

This application, by virtue of its special status, requires an immediate action. MPEP § 708.01(d) 8th Edition, Revision 2, May 2004. It is important that the Board be informed promptly of any action affecting the appeal in this case.

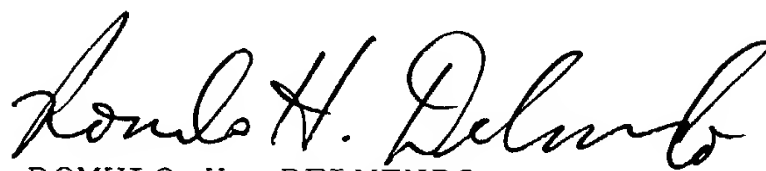
Appeal No. 2004-1949
Application No. 09/851,601

No time period for taking any subsequent action in
connection with this appeal may be extended under 37 CFR
§ 1.136(a).

REMANDED


PETER F. KRATZ


Administrative Patent Judge



ROMULO H. DELMENDO

Administrative Patent Judge

) BOARD OF PATENT
) APPEALS AND
) INTERFERENCES



BEVERLY A. PAWLIKOWSKI

Administrative Patent Judge

BAP/sld

Appeal No. 2004-1949
Application No. 09/851,601

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